SUPREME COURT

OCTOBER TERM,

No. [redacted]

THE SAN FRANCISCO [redacted]

vs.

WASHINGTON DODGE, [redacted]
CITY AND COUNTY OF SAN FRANCISCO,

Brief for Appellant.

Filed [redacted]

IN THE

Supreme Court of the United States.

October Term 1904.

No. 44.

THE SAN FRANCISCO NATIONAL BANK,
Appellant,

vs.

WASHINGTON DODGE, AS ASSESSOR OF THE CITY AND COUNTY OF SAN FRANCISCO,
Appellee.

Brief for Appellant.

This is an appeal from a judgment of the Circuit Court of Appeals of the Ninth Circuit.

The case was originally brought in the Circuit Court for the Northern District of California, and was taken therefrom by appeal to the Court from which the present appeal is prosecuted.

The question involved concerns the validity of an assessment and tax made and levied upon the shares of the capital stock of appellant.

The appellant is a national bank having a capital stock of $500,000, divided in 5,000 shares, of the par value of

$100 each, all of which are outstanding and owned by a large number of persons.

In the year 1881, the Legislature of the State of California adopted a new section to the Political Code reading:

> "Sec. 3608. Shares of stock in corporations possess no intrinsic value over and above the actual value of the property of the corporation which they stand for and represent, and the assessment and taxation of such shares and also of the corporate property would be double taxation. Therefore all property belonging to corporations shall be assessed and taxed, but no assessment shall be made of shares of stock, nor shall any holder thereof be taxed therefor."

In the year 1899, the Legislature passed an act amending Section 3608 of the Political Code and adding new sections to be known as Sections 3609 and 3610.

Sections 3608, as amended, and the added sections read:

> "3608. Shares of stock in corporations possess no intrinsic value over and above the actual value of the property of the corporation which they stand for and represent; and the assessment and taxation of such shares, and also all the corporate property, would be double taxation. Therefore, all property belonging to corporations (save and except the property of national banking associations not assessable by federal statute), shall be assessed and taxed. But no assessment shall be made of shares of stock in any corporation (save and except in national banking associations, whose property, other than real estate, is exempt from assessment by federal statute)."
>
> "3609. The stockholders in every national banking association doing business in this State, and having its principal place of business located in this State, shall be assessed and taxed on the value of

their shares of stock therein; and said shares shall be valued and assessed as is other property for taxation, and shall be included in the valuation of the personal property of such stockholders in the assessment of the taxes at the place, city, town, and county where such national banking association is located, and not elsewhere, whether the said stockholders reside in said place, city, town or county, or not; but in the assessment of such shares, each stockholder shall be allowed all the deductions permitted by law to the holders of moneyed capital in the form of solvent credits in the same manner as such deductions are allowed by the provisions of paragraph six of section thirty-six hundred and twenty-nine of the Political Code of the State of California. In making such assessment to each stockholder, there shall be deducted from the value of his shares of stock such sum as is in the same proportion to such value as the total value of its real estate and property exempt by law from taxation bears to the whole value of all the shares of capital stock in said national bank. And nothing herein shall be construed to exempt the real estate of such national bank from taxation. And the assessment and taxation of such shares of stock in said national banking associations shall not be at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this State."

"3610. The assessor charged by law with the assessment of said shares shall, within ten days after he has made such assessment, give written notice to each national banking association of such assessment of the shares of its respective shareholders; and no personal or other notice to such shareholder of such assessment shall be necessary for the purpose of this act. And in case the tax on any such stock is unsecured by real estate owned by the holder of such stock, then the bank in which said stock is held shall become liable therefor; and the assessor shall collect the same from said bank, which may then charge the amount of the tax so collected to the account of the

stockholder owning such stock, and shall have a lien, prior to all other liens, on his said stock, and the dividends and earnings thereof, for the reimbursement to it of such taxes so paid."

Statutes 1899, page 96.

Under the authority claimed to have been given by the foregoing enactments, the appellee, as Assessor of the City and County of San Francisco, on or about March 12, 1900, upon being furnished with a list of stockholders, proceeded to assess the shares of appellant for State and City and County purposes. The appellant did not own any real estate, but was possessed of certain personal property as follows:

Bonds of the United States of the face value of $50,000, with premium added of the actual value of	$ 54,800.00
Cash	175,748.00
Furniture of the value of	5,450.00
Solvent credits over and above debts due and owing, amounting to	343,663.32
and Redemption fund	2,250.00
making the aggregate the sum of	$581,911.32

as the total value of its personal property.

The appellee fixed the value of the shares for taxation purposes at $104.356 each and arrived thereat in the following manner: He added to the capital stock of appellant, amounting to the sum of $500,000 its undivided profits amounting to the sum of $77,260, making in the aggregate the sum of $577,260, and then deducted therefrom the face value of the United States bonds, namely,

$50,000, and the value of the furniture of appellant, namely, $5,500, or in the aggregate $55,500, leaving $521,760 as the total assessable value of the property of appellant; and upon dividing the sum by the number of shares of the capital stock of appellant, made the assessable value of each share the sum before stated.

The tax levy for the year 1900 for State and City and County purposes was by the proper authorities fixed at $1.63 on each one hundred dollars of value, and finding that 1,217 shares of the capital stock of appellant stood upon its books in the names of persons not owning real estate, the appellee demanded of appellant the payment of the taxes thereon, amounting to the sum of $2,071.58, and in default of such payment threatened to seize the property of appellant. Thereupon and in order to prevent such seizure, the action was begun and a preliminary injunction secured.

The cause was submitted upon an agreed statement of facts, in which, after the admission of matters alleged in various paragraphs of the Bill of Complaint, the following facts are agreed:

1. That the financial standing of the one hundred and seventy-eight commercial banks of California is shown in a tabulated statement annexed to the stipulation and copied in the record.

From the statement it appears that the State Banks had credits amounting to more than eighty-four millions of dollars which, under the constitution and laws, they were entitled to deduct from debts, among which are debts to depositors $84,197,990 and to other banks $8,421,544.

That the Commercial Banks are assessed and pay taxes in the manner and form prescribed by the State of California, and that solvent credits owned and held by said banks were moneyed capital in the hands of individual citizens, to wit, the Commercial Banks which enter into competition with appellant; that the franchises of commercial banks and trust companies were also assessed to such companies.

That the manner in which the franchises of commercial banks and trust companies were assessed for said fiscal year ending June 30th, 1901, by the Assessor of the city and county of San Francisco, is illustrated by the case of The Bank of California, a banking corporation organized under the laws of the State of California, and which on said 5th day of March, 1900, had and now has its principal place of business in the said city and county of San Francisco. On the 5th day of March, 1900, the resources of The Bank of California were as follows:

Bank premises	$ 250,000.00
Real estate taken for debt	293,629.27
U. S. Bonds	1,203,380.95
Stocks and bonds of California corporations	1,273,118.86
Furniture	1,000.00
Library	500.00
Typewriter	50.00
Money on hand	2,135,224.00
Total	$5,906,403.08

That the market value of the stock of The Bank of California on said 5th day of March, 1900, was $405 per share, and that on said day there were issued and outstanding twenty thousand shares of the capital stock of

said bank. That the Assessor of said city and county assessed to The Bank of California for the fiscal year ending June 30th, 1901, the following property as held and owned by The Bank of California at 12 o'clock M. on March 5th, 1900.

Real estate	$ 105,000.00
Improvements thereon	70,000.00
Furniture	1,000.00
Library	500.00
Money	2,135,224.00
Typewriter	50.00
Franchise	750,000.00
Total	$3,061,774.00

That there were shares of stock in commercial banking corporations amounting to the sum of thirty million dollars in said State.

That demand was made on appellant for payment of total amount of tax on shares where same was not secured by real estate.

That before making the assessment, appellee caused to be addressed to each stockholder a notice to the effect that such stockholder would be assessed at a named sum upon his shares; that the assessment would be attached to any real estate owned by the stockholder in the City and County, and in case of stockholders not owning real estate, such steps would be taken for the immediate collection of the tax as are authorized by law, and that in case the stockholder had any exemptions or reductions allowed by law, he was asked to call at the Assessor's offce in ten days; that none of the stockholders accepted the invitation, or made any return, and

finally that appellant made no return or statement of any debts due or owing by it unsecured by deed, mortgage or other lien on real or personal property, nor did appellant, or any one for it, ask or request such reduction or deduction.

The foregoing is a synopsis of the agreed statement of facts.

The Constitution of the State of California provides:

> "All property in this State not exempt under the laws of the United States shall be taxed in proportion to its value to be ascertained as provided by law.
> "The word 'property' as used in this article and section is hereby declared to include moneys, credits, bonds, stocks, dues, franchises and all other matters and things, real, personal and mixed. * * *
> "The Legislature may provide, except in case of credits secured by mortgage or trust deed, for a deduction from credits of debts due to bona fide residents of the State."
> Section 1, Article XIII.

Section 3628, Political Code, provides that in assessing solvent credits not secured by mortgage or trust deed, a reduction therefrom shall be made of debts due to bona fide residents of the State.

The questions involved in the appeal are:

(1) That the Act of 1899, providing for the assessment and taxation of shares of the capital stock of National Banks is repugnant to the provisions of Section 5219 of the Revised Statutes of the United States:

(a) Because shares of stock in the Commercial Banks of the State are not taxed and are exempt;

(b) Because by reason of the failure to tax shares in the Commercial Banks of the State, the shares of

national banks are subjected to an adverse discrimination and taxed at a higher rate than such Commercial Bank shares;

(c) Because the provisions, Section 3609, are wholly void, in that it is thereby undertaken to provide that a stockholder may deduct from the value of his shares the amount of his debts due to bona fide residents of the State.

(2) That under the express provision of the Political Code, Sections 3608 and Section 3609, the whole property of the appellant included in the assessment was exempt from taxation.

CONSTITUTIONAL SCOPE OF TAXATION.

In *McCulloch* vs. *The State of Maryland*, 4 Wheaton, 316-429, Chief Justice Marshall observes that,

> "All subjects over which the sovereign power of a state extends are objects of state taxation; but those over which it does not extend are, upon the soundest principles, exempt from taxation. This proposition may almost be pronounced self evident. The sovereignty of a state extends to everything which exists by its own authority or is introduced by its permission; but does it extend to those means which are employed by Congress to carry into execution the powers conferred on that body by the people of the United States? We think it demonstrable that it does not. Those powers are not given by the people of a single State. They are given by the people of the United States, to a government whose laws, made in pursuance of the Constitution, are declared to be supreme. Consequently, the people of a single state can not confer a sovereignty which will extend over them. We find, then, on just theory, a total failure of this original right to tax the means employed by the government of the Union, for the execution of its powers. The right never existed,

> and the question whether it has been surrendered can not arise."

The principle thus announced has ever since remained an axiom in constitutional law.

Section 3 of Article I of the Constitution of California declares that,

> "The Constitution of the United States is the supreme law of the land."

Section 1 of Article XIII of the Constitution of California declares that,

> "All property in this state, *not exempt under the laws of the United States*, shall be taxed in proportion to its value, *to be ascertained as provided by law.*"

This is the source and measure of the constitutional power of the legislature to enact revenue legislation. The declaration is not that all property in the state shall be taxed. Only certain property is to be taxed: all property in the State, not exempt under the laws of the United States. Upon the principle announced by Chief Justice Marshall rests this right of exemption from state taxation; and the exemption is co-extensive with the right itself. The property thus exempted is not subject to state taxation. Mere physical presence within the territorial limits of the sovereignty does not authorize the exercise of the power of taxation. It is a sovereign power. Its exercise is limited by and co-extensive with only the sovereignty of which it is an essential attribute. Property exempt under the laws of the United States independently of this constitutional declaration, would, under the Constitution of the United

States, be exempt from state taxation; but, in order to render this exemption unmistakable and indubitable, the declaration was made in the Constitution of the State that such property shall not be subject to taxation.

In respect to such property, neither the legislature nor the state taxing officers have any authority upon the subject of taxation. It is entirely withdrawn from their jurisdiction. Neither the legislature nor the state taxing officer is authorized to consider the same in dealing with the property that alone the constitution declares shall be taxed. The constitutional injunction is mandatory and prohibitory. Its purpose must not be evaded, directly or indirectly. It matters not how or by whom the exempt property may be held, the exemption is equally obligatory. The exemption must be allowed in its entirety.

Pollock vs. *Farmers' Loan and Trust Co.*, 157 U. S., 429, 581, 582, 583, 585, 586, 592, 646, 652.

When, therefore, the legislature undertakes to enact revenue legislation, its authority to act is circumscribed by this constitutional limitation. It has no constitutional power to enact revenue legislation in respect to such exempted property. The constitutional declaration proclaiming its exemption from State taxation, is under the terms of the Constitution itself, *mandatory* and *prohibitory;* and, therefore, State legislation, under the provisions of the Constitution of this State, is wholly incompetent to legislate upon or affect by its revenue legislation any property exempt under the laws of the United States. The property that alone is taxable

under the laws of the State of California is property not exempt under the laws of the United States; and only in respect to such property has the legislature constitutional power to enact revenue laws.

In respect to property subject to State legislation the Constitution of California is not self-executing. Under the Constitution of California there can be no taxation without legislation. The constitutional mandate is that the taxable property of the State shall be taxed in proportion to its value to be ascertained as provided by law. Proportion to *its value* is a constitutional condition of state taxation; but such value is to be ascertained as provided by law. Hence, there must be legislation before there can be constitutional taxation under the Constitution of California.

Under the constitutional principle thus announced by Chief Justice Marshall, national banks are not subject to state taxation. The franchise to be a national bank is not subject to state taxation.

Owensboro National Bank vs. *Owensboro,* 173 U. S., 671;

National Bank of Louisville vs. *Louisville,* 174 U. S., 438-439.

First National Bank of Louisville vs. *Stone,* 174 U. S., 438-439.

While national banks are not subject to state taxation, Congress has declared that

> "The legislature of each state may determine and direct the manner and place of taxing all the shares of national banking associations located within the state, subject only to the two restrictions that the

taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state, and that the shares of any national banking association owned by non-residents of any state shall be taxed in the city or town where the bank is located, and not elsewhere."

United States Revised Statutes, Sec. 5219, 173 U. S., 668, *Owensboro National Bank* vs. *Owensboro.*

This is the measure of the power of the state to tax national banks.

First National Bank vs. *San Francisco,* 129 Cal., 97.

The authority thus given is to tax, not the banks, but the shareholders; and the authority to tax shareholders is upon the express limitations thus declared by Congress.

Whenever, therefore, state legislation assumes to tax shareholders of national banks at a greater rate than other moneyed capital in the hands of individual citizens of such state, such legislation is unconstitutional and void.

People vs. *Weaver,* 100 U. S., 539;
Pelton vs. *National Bank,* 101 U. S., 146;
Evansville Bank vs. *Britton,* 105 U. S., 322;
McHenry vs. *Downer,* 116 Cal., 25;
Miller vs. *Heilbron,* 58 Cal., 133.

The question occurs, therefore: Is there in California any legislation authorizing taxation of shares in national banks? And, if there be such legislation, is it constitutional?

In *McHenry* vs. *Downer*, 116 Cal., 25, the Supreme Court decided that there was no constitutional legislation of the state authorizing the taxation of shares in national banks. Evidently with a view of supplying such omission, the legislature passed the act of March 14, 1899 (Statutes of 1899, p. 96).

Constitutionality of the Act of the Legislature Undertaking to tax Shareholders in National Banks.

To determine the constitutionality of this Act it becomes necessary to examine its provisions in order to ascertain whether or not it authorizes taxation of shareholders in national banks at a rate not greater than assessed upon other moneyed capital in the hands of individual citizens of the State.

Section 3608 declares that:

> "Shares of stock in corporations possess no intrinsic value over and above the actual value of the property of the corporation which they stand for and represent; and the assessment and taxation of such shares, and also the corporate property, would be double taxation. Therefore, all property belonging to corporations, save and except the property of national banking associations not assessable by federal statute, shall be assessed and taxed. But no assessment shall be made of shares of stock in any corporation, save and except in national banking associations, whose property, other than real estate, is exempt from assessment by federal statute."

Under the provisions of this section the stockholder in a State corporation is not subject to taxation. The corporate property of the corporation is alone subject to taxation.

The constitutionality of this statute as to the exemption of shares in state corporations was affirmed in

Burke vs. *Badlam*, 57 Cal., 594;

City and County of San Francisco vs. *Mackay*, 10 Sawyer, 302;

County Commissioners vs. *Farmers & Mechanics' Bank*, 48 Md., 117;

Germania Trust Co. vs. *San Francisco*, 128 Cal., 594.

The rule is familiar, that the decisions of the Supreme Court of the State, construing its constitution and statutes, are binding upon the Federal courts.

Upon the provisions of this section we may remark:

First. Shares of stock in State corporations are declared the taxable equivalent of the corporate property of the corporation;

Second. That shares of stock in a corporation possess no intrinsic value over and above the actual value of the property of the corporation; thus making a legislative declaration and rule for assessment of corporate property binding upon assessors, and to the benefit of which the stockholder is entitled.

Third. Under the provisions of this statutory declaration the stockholders in the state corporation cannot be assessed for his stock at all. The corporation alone is assessed for the corporate property.

The rule thus provided in respect to state corporations is declared inapplicable to national banking associations. While the state corporation is alone assessable under its provisions, there is no authority for assessing national banking associations. Of course, had there been,

it would have been idle, as the State has no power to authorize assessment of the same.

It will be observed that the statutory declaration, and the decision of the Court in *Burke* vs. *Badlam,* 57 Cal., 594, that shares of stock possess no intrinsic value, is at variance with the well-settled decisions of the Federal Courts, the last of which is contained in the Owensboro case 173 U. S., 671; yet, it having been enacted by the legislature, and the constitutionality of that enactment having been affirmed by the Supreme Court of the State, it is binding upon all persons within the State of California subject to its jurisdiction; and all such persons are entitled to invoke the benefit of its provisions. The stockholder in a national bank association is no less entitled to its benefit than the stockholder in a state corporation.

In these particulars, therefore, this section of the Political Code discriminates between shareholders in national bank associations and stockholders in state corporations:

1. The stock of the one is subject to state taxation; the stock of the other is not.

2. The statutory rule as to the value of stock is made applicable to state corporations, and declared inapplicable to national banking associations.

3. The corporate property alone of state corporations is assessable, while, of course, there is neither provision nor authority for assessing the corporate property of national banking associations.

First National Bank vs. *San Francisco,* 129 Cal., 96.

Section thirty-six hundred and nine of this Statute of 1899 declares,

FIRST: Stockholders in national banking associations, doing business in this State, and having its principal place of business in this State, shall be assessed.

SECOND: Such stockholders shall be assessed and taxed on the value of their shares of stock therein.

To render this provision constitutional, the value thus declared taxable should be of no greater value than the actual taxable value of the property of the corporation. Such is the rule under the provisions of section thirty-six hundred and eight in respect to State corporations; and only by applying that rule to shareholders in national bank associations can they stand upon equality with stockholders in State corporations.

If such value be greater than the actual value of the corporate property of the corporation, as applied to shareholders in national banking associations, to the extent of such difference, over and above the actual value of the corporate property, there will be a discrimination against the shareholders in the national banking association, rendering the statute unconstitutional.

Instead of applying this rule, applied to State corporations, a different one is applied to shareholders in national bank associations. The rule declared in respect to shares in national banking associations under section thirty-six hundred and nine is,

> "Said shares shall be valued and assessed as is other property for taxation."

That shares of stock and corporate property essentially differ in value is the settled doctrine of the Federal

Courts in the various decisions already called to the attention of the Court. And that the difference in thus assessing the shareholders in national bank associations largely discriminates against them must be obvious.

Supervisors vs. *Stanley,* 105 U. S., 311;
Evansville Bank vs. *Britton,* 105 U. S., 324.

In regard to State corporations, nothing but property is assessed. The provision for its assessment is the same as that for the assessment of individual property. The only element entering into it that is properly permissible in its assessment is the value—its actual cash value according to the definition prescribed by the statute.

In addition to this, in assessing the corporate property of the corporation, the corporation is entitled to all the exemptions allowed by law. Federal bonds and Federal securities that it may hold must be deducted in assessing its corporate property. They are entitled to all the deductions authorized by the provisions of paragraph six of section thirty-six hundred and twenty-nine of the Political Code; that is to say, "all solvent credits, unsecured by deed of trust, mortgage or other lien on real or personal property, due or owing to such person, or any firm of which he is a member, or due or owing to any corporation of which he is president, secretary, cashier, or managing agent, *deducting from the sum total of such credits* such debts only, unsecured by trust deed, mortgage or other lien on real or personal property as may be owing by such person, firm or corporation, to bona fide residents of this State. No debt shall be so deducted unless the statement shows the amount of such debt as stated under oath in aggregate; provided,

in case of banks, the statement is not required to show the debt in detail, or to whom it is owing; but the assessor shall have the privilege of examining the books of such banks to verify said statement."

Under authority of this provision, State banks are entitled to, and do, deduct the amount they owe to their depositors from the amount due them. If a corporation owns property exempt from taxation, it is entitled to claim the exemption. In fact, the Constitution, declaring what property shall be taxed, excludes property exempt under the laws of the United States from the taxable property of the State.

The sum, therefore, of the assessable value of the corporate property of state corporations is the amount of the value of corporate property remaining after making these deductions therefrom.

Stock, however, is valued in an entirely different way. The value of the stock of a corporation not only depends upon the value of the corporate property, but also upon the skill and efficiency with which its business is conducted, the character of the business, its value, remunerative nature, and various other elements entering into the value of a successful business. The cash value of the plants of two corporations may be precisely the same intrinsically, yet the stock of the two corporations may differ greatly in market value: the one enterprise may not be a success, the other may be prosperous and profitable; the one may have to levy assessments while the other is declaring dividends to its stockholders.

Evidently, therefore, when the stock of the corporation is assessed, and not its corporate property, the assess-

ment of the stock will embrace and include elements not at all entering into the assessment of the property. The difference in amount between these respective elements is necessarily a discrimination against the stockholders in national banks and this discrimination necessarily results from really assessing the stock and not the corporate property of the corporation.

The rule, therefore, applicable to the property of the stockholder in a state corporation, or in a state bank, is not the equivalent of the rule made applicable to stockholders in national banking associations.

In the cases of *Miller* vs. *Heilbron,* 58 Cal., 133, and *McHenry* vs. *Downer,* 116 Cal., 20, the Court declared the rule sought to be applied to the assessment of shares in national bank associations invalid, because in making such assessments deductions were not authorized to be made as provided in paragraph six of Section thirty-six hundred and twenty-nine of the Political Code. Even allowing such deductions, the statute would still remain open to objection for the reason stated and for the further reason that essentially and necessarily included in the valuation of stock is the value of the franchise of the corporation. The franchise of national banking associations, being a federal one is exempt from state taxation, and cannot, therefore, legitimately be allowed to constitute an element of the assessable value of the stock of a shareholder in national banking associations.

Section thirty-six hundred and nine further declares that

"In the assessment of such shares, each stock-

holder shall be allowed all the deductions permitted by law to the holders of moneyed capital in the form of solvent credits, in the same manner as such deductions are allowed by the provisions of paragraph six of Section thirty-six hundred and twenty-nine of the Political Code of the State of California."

Does this provision obviate the objection held fatal in *Miller* vs. *Heilbron,* 58 Cal., 133, and *McHenry* vs. *Downer,* 116 Cal., 20?

Apart from the declaration contained in this amendment, the stockholder, under the law, would be entitled to the deductions allowed by paragraph six of section thirty-six hundred and twenty-nine of the Political Code. This declaration accords him no greater measure of right than he would be entitled to without it. The amendment fails to obviate the difficulty. The real difficulty was and is that the stockholder in a state corporation individually was entitled to the benefit of this exemption, and the corporation itself was equally entitled to the benefit of this exemption. Thus a stockholder in a State bank not only gets the benefit of the deduction of all that he may personally owe to bona fide residents, but also the benefit of the deduction of all that the corporation may owe to such bona fide residents. National bank associations, not being subject to State taxation, are not, as State banks are, in a position to claim the benefit of this right to deductions.

The amendment does not give the stockholder in national banking associations the benefit thus secured to the stockholder in the State bank, through the assessment being made against the corporate property of the corporation. It contains no declaration that in making

the assessment he shall be allowed, not only the benefit of the deductions provided for in paragraph six of section thirty-six hundred and twenty-nine of the Political Code to himself personally, but also his proportion of the deductions to which the banking association would have been entitled were it a State and not a national institution.

Paragraph six of section thirty-six hundred and twenty-nine stands now as it did before the Act of March 14, 1899. As under its terms he was not then entitled to the deductions neither is he now. The objection held good in *Miller* vs. *Heilbron* and *McHenry* vs. *Downer* still remains, and is equally fatal to the attempt to tax the shares of stock in national banks. Stock is not now any more than it was then a solvent credit.

> *Dutton* vs. *Bank*, 53 Kans., 440-463;
> *First National Bank* vs. *Ayres*, 160 U. S., 660-664;
> *McHenry* vs. *Downer*, 116 Cal., 20-27-29.

Its terms will no more authorize the shareholder of a national bank to now claim from the value of his stock deduction of his proportionate share of the debts of the bank to bona fide residents of this State than they did before the enactment of the Statute of March 14, 1899.

In various cases, of which *Aberdeen Bank* vs. *Chehalis County*, 166 U. S., 440, is an illustration this Court has been called upon to determine whether or not exemptions allowed by state laws could operate as a discrimination in the assessment and taxation of shares in national banks. In these decisions the Court established the position that where its constitution permits the state legislature may

make such exemptions from taxation as in its wisdom it may deem proper, and that such exemptions will not operate to create an injurious discrimination in the assessment and taxation of the shares in national banks, that the rule regarding such discrimination can only operate in respect to property *subject to taxation* under the laws of the state, and that it is only in respect to such property the rule against discrimination can have any application. This, of course, is not the question in the case at bar. We are dealing here with a question of the assessment and taxation of property subject to taxation and considering whether or not in respect to such property any such injurious discrimination is made.

In *Palmer* vs. *McMahon,* 133 U. S., 660, the statute of New York there challenged authorized and required assessment of shares of stock of all corporations, national as well as state. The revenue system there in question differs fundamentally from the revenue system of California where corporate property is alone assessable and the shares of stock of corporations are exempt from taxation. We have already pointed out the broad difference resulting from these two different methods of assessment and taxation. The decisions of this Court well illustrate this difference. Thus, in the *Bank of Commerce* vs. *New York,* 2 Black, 620-628, the Court say:

> "The capital of the bank is taxed under existing laws in that state upon valuation like the property of individual citizens, and not as formerly on the amount of the nominal capital, without regard to loss or depreciation.

> "According to that system of taxation it was immaterial as to the character or description of the property which constituted the capital, as the tax imposed was wholly irrespective of it. The tax was like one annexed to the franchise as a royalty for the grant. But since the change of this system, it is agreed the tax is upon the property constituting the capital.
>
> "This stock then is held by the bank the same as such stocks are held by individuals, and alike subject to taxation, or exemption by state authority. On the part of the bank it is claimed that the question was decided in the case of *Weston* vs. *City Councils of Charleston* (2 Peters, 449) in favor of exemption. In that case the stocks were in the hands of individuals which were taxed by the city authorities under a law of the state. The Court held the law imposing the tax unconstitutional. This decision would seem not only to cover the case before us, but to determine the very point involved in it."

The Court accordingly decided that the United States bonds owned by the bank were exempt from State taxation.

Bradley vs. *The People,* 4 Wall., 458.

To this rule the court has ever since adhered. In assessing the property of the corporation, therefore, it must be held exempt from assessment and taxation upon all its federal securities, whereas in assessing its stock to the shareholders, no such exemption is allowed.

Owensboro National Bank vs. *Owensboro,* 173 U. S., 664, 667.

In this last case the court demonstrate that assessment of the corporate property of the corporation is not the equivalent of the assessment of all its shares of stock in

the hands of its stockholders. The case, therefore, conclusively establishes that to the extent of the amount allowed for federal exemptions, there is and must necessarily be a discrimination between the two systems of assessment and taxation of the corporate property of the corporation and of the shares of its stock in the hands of the stockholders. Yet while professing to only impose the same burden of taxation upon the shares of the stock of national bank associations that are imposed upon individual citizens and corporations organized under the State law, the assessor refuses to allow them the benefit of federal exemptions that are allowed to such individuals and corporations. If this be not hostile discrimination violative of the rights of the stockholders of complainant, it is difficult to imagine what would be. The discrimination is patent.

Nor is there anything in *Supervisors* vs. *Stanley,* 105 U. S., 305, opposed to these views. In that and kindred cases the court held that stockholders entitled to exemption at their option upon making certain proof of their right thereto, could not, where they had failed to make such proof and to demand such exemption in the mode prescribed, afterward complain that they had not been accorded the same, and could not upon that ground successfully challenge the constitutionality of the law. Where, however, such demand would have been unavailing, either from want of disposition or of authority on the part of the officer to accord such demand, the rule is quite different, as declared in

Hills vs. *Exchange Bank,* 105 U. S., 327.

In *Whitbeck* vs. *Mercantile Bank,* 127 U. S., 199, the court declared that:

> "Under the decision in *Hills* vs. *Exchange Bank,* 105 U. S., 319, we are of opinion that the bank was entitled to relief in the cases of all the shareholders named in the bill (except James A. Barnett, Robert L. Chamberlain, and James Parmalee) and that the fact that they did not make an earlier demand for the deduction of their indebtedness from the assessed value of the shares of their bank stock does not defeat their right to have it made by this bill in chancery, for the reason that the court expressly finds that the laws of Ohio made no provision for the deduction of the bona fide indebtedness of any shareholder from the shares of his stock and provide no means by which said deduction can be secured."

Here the rights of the stockholders appear and the deliberate purpose to disregard them is shown. Through the corporation complainant its stockholders are entitled to invoke and assert all their legal and constitutional rights.

In regard to the provision of section thirty-six hundred and nine of the Political Code that:

> "In the assessment of such shares, each stockholder shall be allowed all the deductions permitted by law to the holders of moneyed capital in the form of solvent credits, in the same manner as such deductions are allowed by the provisions of paragraph six of section thirty-six hundred and twenty-nine of the Political Code of the State of California."

Turning to the provisions of the Political Code thus referred to, subdivision six of section thirty-six hundred and twenty-nine, it reads:

> "All solvent credits, unsecured by deed of trust, mortgage, or other lien on real or personal property,

due or owing to such person, or any firm of which he is a member, or due or owing to any corporation of which he is president, secretary, cashier or managing agent, deducting from the sum total of such credits such debts only, unsecured by trust deed, mortgage, or other lien on real or personal property, as may be owing by such person, firm or corporation to bona fide residents of this State. No debt shall be so deducted unless the statement shows the amount of such debt as stated under oath in aggregate; provided, in case of banks the statement is not required to show the debt in detail, or to whom it is owing; but the assessor shall have the privilege of examining the books of such banks to verify said statement. Whenever one member of a firm, or one of the proper officers of a corporation, has made a statement showing the property of the firm, or corporation, another member of the firm, or another officer, need not include such property in the statement made by him; but his statement must show the name of the person or officer who made the statement in which such property is included."

This right thus secured to the taxpayer applies alike to individuals and corporations. These are its terms. The stockholder in a State bank is entitled to enjoyment of this right. The bank corporation, of which he is a stockholder, is equally entitled to it. The discrimination in respect to national banks necessarily arises from the fact that while a stockholder in the national bank individually is entitled to this right, the national bank of which he is a stockholder is not, as that organization is not subject to these provisions of the Political Code. There is nothing in the language of section thirty-six hundred and nine already quoted vesting national bank associations with this right, or entitling the stockholder therein to the exercise thereof. There is thus a plain and

manifest discrimination between the two characters of banks. We are not now referring to cases where the legislature under its constitution may authorize and provide for exemptions, authorize or provide for different modes of taxation. We are speaking of cases where citizens embark in the same line of business, differing only in one respect,—one acting under State authority, and the other under the authority of the United States. In respect to such classes we submit there is a necessary and hostile discrimination.

Palmer vs. *McMahon,* 133 U. S., 660, may again be cited in this connection. That case is first reported in 11 Daly, 214, and well illustrates the difference that obtains in the various revenue systems of the different states. Palmer was assessed as a stockholder in a national bank. He had made application for a reduction of his assessment. He there claimed that he was entitled to a reduction of his assessment upon his national bank stock on account of the amount of federal securities held by the national bank of which he was a stockholder, insisting that the amount of such securities should not be considered in estimating the amount for which his stock should be assessed. He was granted a partial reduction by the state board having authority to do so. Under the system there prevailing, had he desired the further reduction upon which he insisted, a method was provided under which he could have reviewed the action of the board making the reduction and obtained a correction thereof. Instead of so doing he allowed the matter to rest there. He failed to pay the tax upon his assessment. In pursuance of the procedure established under the revenue sys-

tem of New York, steps were taken against him to enforce payment of the amount of the tax upon this assessment. To this proceeding he interposed various objections that are enumerated in the report. Among others, one that he had had no opportunity to be heard, in respect to which the court say that abundant provision was made for a hearing, and that he had been heard; and a further objection that the amount of Government bonds held by the bank was not deducted from the assessed value of the bank stock. In regard to this the court say (page 218):

> "The law is not unconstitutional because it has been improperly applied. In the Act of 1880 no limitations are made upon the power of the assessors to make such deductions as the law requires. They are directed to deduct the value of the real estate belonging to the bank. If other deductions should have been made, and they have not been made, the remedy of the party aggrieved is, as has already been suggested, to review the action of the assessors by certiorari; but such action cannot affect the validity and constitutionality of the act of the legislature from which they claim their power."

Upon the subject of a non-exclusion from the assessment of the bonds and federal securities so held by the bank, the court quote the language of Mr. Justice Wallace in the case of *Albany City National Bank* vs. *Maher* therein referred to, wherein the Judge adverts to the distinction there is between the property of the corporation and the property of the stockholder in his stock, upon this point saying (page 219):

> "Capital stock and shares therein are distinct species of property—as distinct as real estate and the mortgage by which it may be incumbered. The

corporation and its capital and property is one thing; the stockholders and their property in its shares, quite another.

"The corporation has the legal title and right of disposition of all the corporate property, subject to the conditions of its charter. The stockholder's right is to enjoy a proportionate part of the profits, or upon dissolution of the corporation a proportionate part of the assets after payment of debts. This is a distinct independent interest or property, held by the stockholder, like any other property that may belong to him. It is this interest which the National Banking Act has left subject to taxation by the states, while the states are denied the power to tax the capital stock of the banking association."

Upon which the state court remarks:

"The distinction which Mr. Justice Wallace points out between the property of the corporation and the property of the individual seems to have been recognized by the courts, and that such distinction exists in fact is apparent when the different rights and obligations of the corporation and the shareholders are considered as stated by Mr. Justice Wallace.

"The corporations own certain property. The corporation, as such, has the disposition and management of such property. The stockholder, as such, has no control of such disposition or management, except such as he may incidentally have by reason of his power to vote at an election for the directors or trustees of such corporations. The stockholder's interest is to enjoy a proportionate share of the profits of the business of the corporation. Over his shares the stockholder has absolute control. He may sell, mortgage, give away, or dispose of in any manner all his right, title and interest to those shares, and his right to share in the profits of the business of the corporation, provided it is done in the manner prescribed by the charter and by-laws of the corporation. These shares, therefore, seem to be distinct and independent properties held by the share-

holders, like any other property, such as bonds and mortgages, or promissory notes, and are, therefore, as distinct from the property of the corporation as the bond and mortgage is from the real estate by which it may be incumbered."

From this decision an appeal was taken and the case is again reported in 12 Daly, 363.

Speaking upon the point of notice and opportunity to be heard the court say:

"The objection that this proceeding is the first opportunity appellant has had to correct the assessment and taxation of his bank stock, is answered satisfactorily by the learned Justice in the court below. The fact of his having appeared and obtained a reduction is conclusive. * * * The objection that there should have been a reduction in the assessment of the proportionate part representing the investment of capital by the bank in government bonds, was considered and overruled in *Van Allen* vs. *The Assessors* (3 Wall., 573) and *The People* vs. *The Commissioners* (4 Wall., 244). It is difficult to cite illustrations from the different kinds of personal property, indicating the distinction between corporate shares and corporate capital. Nevertheless, the difference is apparent to the mental vision. The shares are held, bought and sold at pleasure. Their value is decreased or lessened by factors not directly affecting the capital. If the corporation pays dividends, the stock appreciates, if not, it declines. Share value depends upon the successful or unsuccessful use of capital and business management. Were there no difference between stock and capital, the valuation of the former would depend solely upon the increase or decrease of the latter. The value of any successful business may be far in excess of the capital invested, and the holder of corporate stock shares, possesses more than the right to a proportionate part of the corporate capital, *i. e.*, his *quota* of profit."

The case was thence taken to the Court of Appeals, the report of whose action is found in matter of application of

McMahon vs. *Palmer,* 102 N. Y., 176,

where the Court say:

> "It does not appear that there is any provision of law requiring the assessments of individuals for bank shares in New York to be made otherwise than in the mode adopted in this case, and in the absence of such provisions we do not see why the practice here pursued was not in harmony with the general regulations applicable to the subject, and did not afford to the appellant the same opportunity for correction and notice of the assessment in question that was given to all other tax payers of similar assessments in New York."

The action of the lower court was affirmed. It thus appears that under the revenue laws of New York all banks were treated alike, state and national. There was no distinction made between the state and national, either in rate or mode of assessment. These are the proceedings reviewed in

Palmer vs. *McMahon,* 133 U. S., 660,

where the text of the statute is given (p. 666).

The Court say:

> "We have decided that so much of the capital of national and state banks as is invested in United States securities cannot be subjected to state taxation, People vs. Commissioners of Taxes for New York, 2 Black, 620; Bank Tax Case, 2 Wall., 200; but that shares of bank stock may be taxed in the hands of their individual owners at their actual instead of their par value, People vs. Commissioners of Taxes, 94 U. S., 415; Hepburn vs. School Directors, 23 Wall., 480; without regard to the fact that part or the whole of the capital of the corporation might be

so invested; Van Allen vs. Assessors, 3 Wall., 573; Bradley vs. People, 4 Wall., 459; People vs. Commissioners, 4 Wall., 244; and that under acts permitting the deduction of debts from the value of all a person's taxable property, such deduction must be permitted from the value of such shares, People vs. Weaver, 100 U. S., 539, 546; but that a statute is not void because it does not provide for a deduction, nor is the assessment void if deductions are not made, but voidable only, Supervisors vs. Stanley, 105 U. S., 305. We have also held that individual instances of omission or under-valuation cannot be relied on to invalidate an assessment, Supervisors vs. Stanley, supra; and that because a state statute does not provide for the taxation of shares in corporations other than banks, it does not follow that the tax of moneyed capital invested in bank shares is at a greater rate than that of the moneyed capital of individual citizens invested in other corporations, nor are the shareholders in national banks discriminated against, because the taxation of such other corporations is arrived at under a separate system."

We have been thus particular in giving the history of this case in order to arrive at the correct value of the legal principles it establishes. The case establishes, among other things:

First: The right of the taxpayer to notice and opportunity to be heard in respect to his assessment. He is entitled to such notice, and without it proceedings to assess him would be void, as depriving him of his property without due process of law.

Second: All moneyed capital, whether invested in state or national banks, under the revenue laws there in question, were assessed in the same manner and at the same rate.

There was, therefore, no discrimination in this respect between State and national banks.

Third: Deduction was made from the assessment of a certain amount of federal securities held by the bank and the right to insist upon further deductions was not denied to Palmer, because he elected to abide by the assessment and did not pursue his remedy by certiorari to obtain such further reduction on that account as he claimed.

Fourth: That taxation of the corporate property of a corporation is one thing; taxation of the stock of the shareholders in that corporation is another and a different thing. That in assessing the former so much of the capital of national and state banks as is invested in United States securities cannot be subjected to state taxation. But that shares of stock in national banks may be taxed in the hands of their individual owners without regard to the fact that part or whole of the capital of the corporation might be so invested. Decision upon this last position was not required as Palmer had not put himself in a condition to call for its decision. Had he pursued his remedy by certiorari and being denied the reduction claimed, he would have been in a position to invoke decision upon the point.

This last proposition is exhaustively considered in *Owensboro National Bank* vs. *Owensboro*, 173 U. S., 664, in which the difference between taxation of the corporate property of a corporation and taxation of stock of the corporation in the hands of the stockholders is clearly pointed out, and distinctly declared the one not to be the equivalent of the other; in other words, the rule laid

down in *Burke* vs. *Badlam*, 57 Cal., 594, is in direct opposition to the rule laid down in *Owensboro National Bank* vs. *Owensboro*.

Under the federal rule where corporate property is taxed, deductions must be made. Where stock is taxed, deductions need not be made. The distinction is based upon the principle that in the first instance the tax is directly upon the federal security, etc. In the second the tax is not upon the corporate property, of which the federal security may constitute a part, but upon the interest of the stockholder therein regardless of the constituents of which such corporate property may consist. The rule was formulated as a criterion to determine when federal securities were exempt from state taxation, not for the purpose of determining the equality of the burdens of taxation, and that is the question here.

In all of the decisions of the federal courts upon the subject of taxation the rule is announced and enforced that the decisions of the State Supreme Court in expounding their constitutional and revenue laws are controlling, and that the Federal Courts will defer thereto. The rule announced in *Burke* vs. *Badlam*, has ever since its announcement continued to be the law of this State. The Legislature in 1881 conformed the revenue laws of this State on this subject thereto, distinctly declaring: "That shares of stock in corporations have no intrinsic value over and above the actual value of the property of the corporation which they stand for and represent, and the assessment and taxation of such shares and also the corporate property would be double taxation. Therefore, all property belonging to corporations shall

be assessed and taxed, but no assessment shall be made of shares of stock, nor shall any holder thereof be taxed therefor."

Every taxpayer of the State of California is entitled to the benefit of this rule, be he a shareholder in a State bank or in a National bank. The difference between this rule and the rule announced in *Owensboro National Bank* vs. *Owensboro,* 173 U. S., 664, is patent. Under the State rule, as we may call it for convenience, so much of the capital of National and State banks as is invested in United States securities cannot be subjected to State taxation. Under the federal rule the national bank stockholder is denied this exemption. Under the one rule a stockholder in a State bank can only be assessed upon the value of the corporate property of the corporation, after making all deductions for federal securities, etc., therefrom. Under the federal rule the national bank stockholder is assessed not only for the amount of this value, and also upon the value of the federal securities held by the bank, but upon that further element of value thus described by the court in

McMahon vs. *Palmer,* 12 Daly, 364:

> "Their value," (to wit, shares of stock) "is decreased or lessened by factors not directly affecting the capital. If the corporation pays dividends the stock appreciates, if not, it declines. Share value depends upon the successful or unsuccessful use of the capital and business management. Were there no difference between stock and capital, the valuation of the former would depend solely upon the increase or decrease of the latter. The value of any successful business may be far in excess of the capital invested, and the holder of corporate stock shares, possesses

more than the right to a proportionate part of the corporate capital, i. e., his quota of profit."

We thus see that a marked discrimination results against the stockholder in National banks in assessing them upon their shares, unless in so doing they are allowed all the exemptions and deductions to which the stockholder in a State bank is entitled. The mode or manner of assessment is not the material question so much as the forbidden discrimination that may result therefrom. This discrimination necessarily results from operation of the different revenue systems. It does not necessarily depend upon the mere allowance of right to the deductions allowed under subdivision six of section thirty-six hundred and twenty-nine of the Political Code.

Nor is there anything in *National Bank of Wellington* vs. *Chapman,* 173 U. S., 205, opposed to the positions here advanced. The pith of that decision is (page 217) that there was no showing of the amount of credits so that the Court could determine whether or not there was any injurious discrimination, the Court saying:

"The question recognized by the state court, therefore, remains whether there is any such discrimination?

"The chief ground for maintaining that there is, exists in the fact that the owner of what is termed 'credits' in the statute is permitted to deduct certain classes of debts from the sum of those credits, upon the remainder of which taxes are to be assessed, while the national bank shareholder is not permitted to deduct his debts from the value of his shares upon which he is assessed for taxation.

"It is claimed in substance that all credits are moneyed capital, and that they are large enough in amount, when compared with the moneyed capital invested in national banks, to become an illegal discrimination against the holders of such shares.

> "There is no finding of the trial court upon the subject of the total amount of credits in the state." * * * (page 219). "We are thus wholly prevented from ascertaining what proportion the moneyed capital of individual citizens, including in the term 'credits' (and from which some classes of debts can be deducted) bears to the amount invested in national bank shares. We are, therefore, unable to say whether there has or has not been any material discrimination such as the federal statute was enacted to prevent. We cannot see upon these facts any substantial difference between this case and that of *Bank of Garnett* vs. *Ayres*, 160 U. S., 660, and *Aberdeen Bank* vs. *Chehalis County*, 166 U. S., 440, and *Bank of Commerce* vs. *Seattle*, 166 U. S., 463."

In this case we are supported by a statement of fact which furnishes a demonstration of the discrimination against the shareholders in national banks.

The leading bank in the state was accepted as an illustration of the method universally followed. The Bank of California is known all over the world and we naturally assume that to this court its high and commanding place in the world of finance will be recognized. By the showing presented in this record it was possessed of taxable property according to the judgment applied in the case of the assessor of the City and County of San Francisco as follows:

Real estate	$105,000
Improvements thereon	70,000
Furniture	1,000
Library	500
Money	2,135,224
Typewriter	50
Franchise	750,000
Total	$3,061,774

In other words and as may be roundly stated the Bank of California had as assessable assets, including its real estate, three million dollars in value. Its capital stock is divided in twenty thousand shares, and it thence appears that to each share of stock the tax burden according to the doctrine of equivalency was at the rate of one hundred and fifty dollars. In the market the same shares were of the value of four hundred and five dollars (Record, page 80) and it thus appears that if we are to be relegated to the doctrine of equivalency and this case is to be decided upon the proposition that taxation of corporate property is the equivalent of the taxation of shares that in California the stockholders in the Bank of California and other commercial banks sustain a burden of taxation of one hundred and fifty dollars per share upon a market valuation of four hundred and five dollars per share or at the rate of 37 per cent of value while the National bank shareholder as shown in this case sustains a burden of one hundred dollars per share upon a valuation of one hundred and five dollars per share or in other words ninety-six per cent of the value. By the legislation now in force in California and against which we are now protesting it is thus made to appear and does appear that the shareholder in a state commercial bank through the taxation of his corporation sustains and pays a tax upon thirty-seven per cent of the value of his stock, while the unfortunate holder of shares in a national bank is mulcted at the rate of ninety-six per cent on the value of his shares. The wide variance between thirty-seven and ninety-six is certainly sufficient to establish and justify the claim of a discrimination which ought not to be allowed. When this

government decided to establish national banks it pursued a wise and broad purpose, and with the strong determination which marked all the steps of reconstruction the legislation in regard to national banks proceeded upon the proposition that no state should be allowed by its revenue laws to discourage investment in shares. California has always held out against the adoption and use of national currency, and until the present law was enacted has persistently refused to recognize her power to tax national bank shares. The general exemption from taxation of all corporate shares is the prevailing and accepted idea in California, and rather than abandon that idea the state has heretofore been willing to let national bank shares go free and even now and when it has become and is apparent owing to the growth of the state that national bank shares should be taxed the state still clings to its idols and insists on the right to tax national bank shares according to their value, while at the same time wholly exempting the shares of its own banks from taxation and claiming as its defense against such an unjust and unwarrantable discrimination that it does tax the corporate property of the state banks whereby the holder of shares in the state bank sustains a burden of about one third of that which is imposed upon the holder of national bank shares.

It should, however, be said that the claim made in the present case that taxation of corporate property is the equivalent of the taxation of the shares of the corporation has been generally repudiated.

This Court has said:

"To be equivalent in law, involves the proposition

that a tax on the franchise and property of a bank or corporation is the equivalent of a tax on the shares of stock in the names of the shareholders. But this proposition has been frequently denied by this court, as to national banks, and has been overruled to such an extent in many other cases relating to exemptions from taxation, or to the power of the states to tax, that to maintain it now would have the effect to annihilate the authority to tax in a multitude of cases, and as to vast sums of property upon which the taxing power is exerted in virtue of the decisions of this court holding that a tax on a corporation or its property is not the legal equivalent of a tax on the stock, in the names of the stockholders."

Owensboro National Bank vs. Owensboro, 173 U. S., 677.

It would seem unnecessary to ask this court to read the citations given in its own opinion to sustain its conclusion, and we may for such reason rest in the assurance that this court will follow the course of decision which has been recognized at all times from the earliest cases; and if this view be recognized, as to us it seems it must, then it will be acknowledged that the taxation of corporate property is not the equivalent of the taxation of its shares, and the total exemption of the shares of commercial banks from taxation creates a discrimination against national bank shares in derogation of the plain terms of section 5219 of the Revised Statutes.

The Legislative Enactment by its Express Provisions Exempts the Property in Question from Taxation.

Section 3608 of the Political Code of California provides and declares that all of the property of national banks save real estate is exempt from taxation. That was a familiar and well-recognized rule and had been sustained in numerous cases. In 3609 it is provided that each shareholder in a national bank shall be entitled to deduct

his proportion of the property of the bank exempt by law from taxation. In other words, the whole body of shareholders entitled to deduct and claim as exempt from taxation the value of all the property of the bank which is exempt. This, as must be and is recognized, means that the shareholders are entitled to claim as exempt all the personal assets of the bank. There is and can be no question that the true reading of the language of the statute justifies our statement, and the only answer that is or can be made is that the legislature did not mean to enact any such thing; or in other words, that the legislature said and solemnly enacted one thing when it meant something wholly different.

We stand on the letter of the law. We humbly submit that this court will not make a law for the State of California, or by forced interpretation construe a statute to impose a tax where, by the ordinary reading of the language, none is imposed. There is no poetry in the measure of taxation. In the apt words of the Supreme Court of California, we can say:

> "Any attempt on the part of the state, or of the county as one of the subdivisions of the state, to take the property of an individual for public purposes by way of taxation, must find an express statutory warrant, and all laws having this object are to be construed strictly in favor of the individual as against the state. Whether his property is to be taken by seizure or by suit, the rule is the same. In the one case the officer must show his warrant for the seizure, and in the other the plaintiff must establish every fact essential to the maintenance of his right of recovery. In either case the proceeding is *in invitum*, and no presumption is to be indulged in favor of the right to take the property, or of any intention that is not distinctly expressed in the statute under which it is sought to be taken. (Sutherland on Statutory Con-

struction, sec. 363; Monterey Co. v. Abbott, 77 Cal. 541; Camden v. Allen, 26 N. J. L. 398; Sewall v. Jones, 9 Pick. 412). A tax can never be extended by construction to things not named or described in the statute as the subject of taxation. It was said by Lord Cairns in Partington v. Attorney General, Law Rep. 4 H. L. 122: ' The principle of all fiscal legislation is that, if the person sought to be taxed comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible in any statute what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where *you can simply adhere to the words of the statute.*' "

Merced County vs. Helm, 102 Cal. 159-165.

We cite the foregoing with confidence that it is a true statement of the law, and if it be accepted, then the present case must follow the rule thus declared, and it must be held that the shareholders of the appellant bank were entitled to deduct from the value of their shares all the property exempt from taxation, and if such be the conclusion then it will be admitted, as it necessarily must be, there was nothing left to assess.

Respectfully submitted,

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